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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, Plaintiff and Appellant, v. JM BULLION, INC., et al., Defendants and Respondents.	B286916 (Los Angeles County Super. Ct. No. SC123012)

APPEAL from a judgment of the Superior Court of Los Angeles County, Nancy L. Newman, Judge. Affirmed.

Best Best & Krieger, Christopher E. Deal and Joseph A. Levota for Plaintiff and Appellant.

Jensen Law Firm, Jan Jensen; Royer Cooper Cohen Braunfeld and Barry L. Cohen for Defendant and Respondent JM Bullion, Inc.

Law Offices of Howard S. Fisher, Howard S. Fisher and Alexander Jordan Fisher for Defendant and Respondent Apmex, Inc.

This appeal addresses the topical subject of identity theft. Appellant Old Republic Insurance Company (ORIC) provided title insurance for a refinancing loan secured by real property. The borrowers falsely identified themselves to the lender as the true owners of the property, and obtained a loan of $2 million. When the real owners discovered the fraudulent transaction three weeks later, they notified the lender and appellant ORIC had to pay out on the title insurance policy. In the meantime, the imposter borrowers used the $2 million to purchase gold coins and bullion from respondents JM Bullion (JMB) and Apmex, Inc. (Apmex). Appellant sued respondents to recover the loan proceeds used to purchase the gold. The question presented on appeal is whether the trial court erred in granting summary judgment in favor of respondents, finding they were bona fide purchasers of the cash with neither actual nor constructive notice of the fraud. We conclude the trial court was correct and affirm the judgment.

BACKGROUND

In early 2013 two or more individuals stole the identities of Mehrdad Saghian and Stephanie Jarin and contacted 1st Point Lending, Inc., a loan broker, about refinancing real property owned by Saghian and Jarin in Beverly Hills. 1st Point contacted lender OK, LLC, which agreed to refinance the property. Greater LA Escrow, Inc. and Title 365 Company opened escrow for the $2 million cash out refinance loan.

On February 5, 2013, OK, LLC transferred $2 million to the Title 365 Company escrow account; Title 365 then transferred about $1.98 million to Greater LA Escrow's account. On February 6, 2013, Title 365 issued an ORIC title insurance policy to the lender. Greater LA Escrow transferred the net proceeds of

the loan, about $1.87 million, to an account at Comerica Bank set up falsely in the name of Mehrdad Saghian.

On February 12, 2013, an imposter identifying himself as Saghian purchased a set of gold coins from respondent Apmex. The next day, the imposter purchased another set of gold coins from Apmex and wired a total of $345,258.00 from the Saghian Comerica account to Apmex. Apmex shipped both sets of coins to an address in San Marino later determined to house a mail box business.

Simultaneously, an imposter identifying himself as Saghian entered into five transactions to purchase gold coins and/or bullion from respondent JMB. The imposter wired a total of $773,765.00 from the Saghian Comerica account to JMB, which shipped the gold to the San Marino address.

On March 8, 2013, the real Mehrdad Saghian and Stephanie Jarin advised Greater LA Escrow that their identities had been stolen and their signatures forged on the loan documents. On March 26, 2013, the lender OK, LLC made a claim under the ORIC title insurance policy. ORIC had not investigated the loan before issuing its policy and it paid OK, LLC's claim on June 19, 2013. It is undisputed that respondents JMB and Apmex were uninvolved in the fraudulent refinancing scheme.

In August 2015, ORIC filed this lawsuit, seeking recovery from JMB, Apmex, and 1st Point Lending, Inc., but not the two escrow companies. ORIC asserted causes of action against JMB and Apmex for conversion, constructive trust, and restitution. On September 15, 2017, the trial court granted summary judgment in favor of JMB and Apmex. This appeal followed.

DISCUSSION

ORIC's primary claim against respondents was for conversion. Conversion is the wrongful exercise of dominion over the property of another. (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 543.) As between the original property owner and the initial person who wrongfully exercised control over the owner's property, conversion is a " 'species of strict liability in which questions of good faith, lack of knowledge and motive are ordinarily immaterial.' " (*Irving Nelkin & Co. v. South Beverly Hills Wilshire Jewelry & Loan* (2005) 129 Cal.App.4th 692, 699.) "In cases where the property changes possession more than once, a plaintiff has a cause of action for conversion if the defendant who is sued for conversion took the property from another converter, and took it with actual or constructive notice that the prior conversion took place." (*Ibid.*)

Here, the property had changed possession several times before reaching respondents. Thus, respondents could overcome liability for conversion by proving they were bona fide purchasers of the cash. (See *Oakdale Village Group v. Fong*, *supra*, 43 Cal.App.4th at p. 547.) A bona fide purchaser is an entity which pays value for the converted property, in good faith and without actual or constructive notice of another's rights. (*Deutsche Bank National Trust Co. v. Pyle* (2017) 13 Cal.App.5th 513, 521.)

It is undisputed that respondents "purchased" the imposter's cash for value, that is, they sold gold to the imposter at about market value. It is also undisputed that respondents did not have express information that the imposter had stolen his cash, and thus did not have "actual notice" the cash was stolen. (Civ. Code, § 18.)

Respondents moved for summary judgment on the ground there was no evidence they had constructive notice the imposter's cash was stolen, and so they were bona fide purchasers not liable for conversion. They argued if they were not liable for conversion, the remaining causes of action for constructive fraud and restitution fell as well.

Constructive notice "is imputed by law." (Civ. Code, § 18.) There are several forms of constructive notice. As relevant here, when a person has a legal duty to take notice of a specific fact or circumstance such as a recorded deed or a pending lawsuit, knowledge of that fact is imputed to the person regardless of whether he or she checks the relevant records. (*Nelson v. Superior Court* (2001) 89 Cal.App.4th 565, 574.) Further, "[e]very person who has actual notice of circumstances sufficient to put a prudent person upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he or she might have learned that fact." (Civ. Code, § 19.)

In granting JMB's motion, the trial court found ORIC "failed to demonstrate that Defendant JM Bullion had a legal duty to take notice of any specific facts for the purposes of constructive notice or that any facts or circumstances triggered Defendant JM Bullion's duty to investigate such that Defendant [was] charged with the knowledge of the fact[s] that would have been uncovered by a reasonable investigation through inquiry notice." As part of its ruling, the trial court sustained JMB's objections to the declaration of ORIC's expert Dennis Lormel and excluded most of that declaration.

In granting Apmex's motion, the trial court found ORIC "has not submitted evidence to show that Defendant Apmex had

a duty to take notice of certain facts for the purposes of constructive notice. Nor has Plaintiff raise[d] a triable issue of material fact by producing evidence of any facts or circumstances that existed to trigger a duty to investigate such that Defendant Apmex is charged with the knowledge of the facts that would have been uncovered by a reasonable investigation through inquiry notice – until after the second transaction had occurred and the Fraud Perpetrators attempted a third transaction in the third consecutive day." As part of its ruling, the trial court sustained Apmex's objections to the declaration of ORIC's expert Dennis Lormel and excluded most of that declaration.

A. Standard of Review

"Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) We may affirm the court's ruling on any basis supported by the record. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.)

We review the trial court's ruling on evidentiary matters for an abuse of discretion. (*Duarte v. Pacific Specialty Ins. Co.* (2017) 13 Cal.App.5th 45, 52.)

B. Summary Adjudication In Favor Of JMB On The Conversion Cause Of Action Was Proper.

ORIC contends the trial court erred because (1) ORIC offered "evidence [that] established that JMB failed to act in accordance with industry standards (and its own internal policies) and violated its AML [anti-money laundering] obligations by processing these orders without a minimal, reasonable investigation;" and (2) ORIC's evidence established the existence of triable issues of material fact "regarding JMB's awareness of facts that would have put a cautious and prudent coin or precious metal dealer on inquiry regarding the suspect nature of the alleged transactions." In addition, ORIC contends the trial court abused its discretion in excluding most of the Dennis Lormel declaration because Lormel was qualified to render an opinion as to JMB's AML program and "red flags" in the subject transactions. ORIC concludes there is evidence showing that JMB had constructive notice the imposter's cash was stolen and therefore summary adjudication was not proper.

1. The trial court's ruling

The trial court found JMB had submitted evidence that "[t]he amount of gold transacted was not suspicious because this amount was routinely made by Defendant JMB's customers. . . . Further, there was nothing unusual about the San Marino street address where the gold bullion coins were delivered, the names of the parties to the transaction, or the bank where the funds were transferred from. . . . Defendant further [contends] that neither the Bank Secrecy Act nor anti-money laundering statutes ('AML') impose constructive notice on it." Thus, JMB argued, nothing about the transactions raised any "red flags" which would have caused a prudent person to make inquiries.

In response, "Plaintiff appears to argue . . . that these statutory requirements set a 'standard of care' and contends that Defendant had constructive and/or inquiry notice 'by virtue of its duties and obligations under industry standards, its internal policies, the Bank Secrecy Act and Anti-Money Laundering statutes . . . .' Plaintiff argues that Defendant JMB failed to conduct any inquiry . . . as required by 'industry standards' and these statutes."

The court found there was no evidence JMB was subject to the Bank Secrecy Act and the AML statutes at the time of the transactions. The court pointed out that the declaration of ORIC's expert Dennis Lormel conceded as much. The court further found that if JMB "was not required to make a reasonable investigation under the statutes, then Defendant JM Bullion is only charged with the knowledge of reasonable investigation if there were 'facts sufficient to arouse the suspicions of a reasonable person' such as 'red flags.' "

The trial court found, however, that "Plaintiff has not raised a triable issue of material fact on the subject of notice by submitting evidence that various 'red flags' existed. In particular, . . . Plaintiff has submitted no competent evidence that the 'red flags' identified by Mr. Lormel are red flags for a person operating in Defendant's industry – the precious metal industry. . . . Mr. Lormel, who represents that he has extensive experience in financial services sector, has not demonstrated that he has the expert foundation to opine on the issue of 'red flags' within the precious metal industry. Neither Mr. Lormel's declaration nor his CV indicate knowledge of the 'industry standards' of the precious metal industry such that he may opine as to the 'red flags' identified in his declaration. . . . Further, the

court finds that Mr. Lormel's declaration is insufficient to create a triable issue of material fact on constructive or inquiry notice because Mr. Lormel does not appear to have adequate foundation for these opinions." (Footnote omitted.) The trial court sustained all but one of JMB's objections to the Lormel declaration.

2. JMB did not have constructive notice the cash was stolen

Where a person has a duty to investigate, the law imputes to that person the knowledge of the facts which an investigation would have uncovered. (Civ. Code, §§ 18, 19; *Nelson v. Superior Court, supra,* 89 Cal.App.4th at p. 574.) There are two different and distinct duties to investigate: [1] cases where a person is "under a duty to inquire", and [2] "those in which he is not obliged to make any investigation until he has notice or knowledge of the happening of some incident or of some fact or facts sufficient to arouse the suspicions of a reasonable person." (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 442.) ORIC is claiming that both duties applied in this case. We disagree.

a. JMB did not have a duty to investigate under California law.

"In the absence of' ' " extraordinary and specific facts," ' banks and merchants generally do not owe complete strangers to a transaction any duty to investigate the suspicious activities of the bank's or merchant's customers." (*QDOS, Inc. v. Signature Financial, LLC* (2017) 17 Cal.App.5th 990, 1000, fn. 3.) More broadly, " '[r]ecognition of a duty [under negligence law] to manage business affairs so as to prevent purely economic loss to third parties in their financial transactions is the exception, not the rule.' " (*Id.* at p. 998.)

ORIC argues, in effect, that JMB's internal procedures and the precious metals industry standards constitute an exception to

the general rule of no duty to third parties and imposed a duty on JMB to conduct a reasonable investigation before processing transactions, and so knowledge of facts which an investigation would have uncovered is imputed to JMB. ORIC is mistaken.

A business's creation of internal procedures or an industry's setting of standards does not create a duty for the business to investigate for the benefit of strangers or third parties, unless the procedures or standards were created for the protection of third parties. (See *Software Design & Application, Ltd. v. Hoefer & Arnett, Inc.* (1996) 49 Cal.App.4th 472, 481–482.) ORIC presented no evidence that JMB's procedures or the industry standards were created to protect third party crime victims.

b. JMB did not have a duty to investigate under federal law.

ORIC contends it presented evidence that JMB had an obligation under the AML laws to investigate the transactions; therefore knowledge of facts which an investigation would have uncovered must be imputed to JMB. ORIC did not present such evidence. ORIC expert Dennis Lormel's summary of the evidence showed that JMB did not become subject to "AML reporting requirements" until the last quarter of 2013. The transaction in this case occurred in the first quarter of that year. To the extent ORIC contends JMB was required to have an AML compliance program even if it was not subject to "AML reporting requirements," ORIC is mistaken.

Federal AML regulations impose different obligations on "dealers" in precious metals than on "retailers" of precious metals. "[T]the term 'dealer' means a person engaged within the United States as a business in the purchase and sale of covered

goods and who, during the prior calendar or tax year . . . [p]urchased more than $50,000 in covered goods." (31 C.F.R. § 1027.100(b)(1)(i) (2018).) "Retailer means a person engaged within the United States in the business of sales primarily to the public of covered goods." (*Id.*, § 1027.100(f) (2018).) "[T]he term 'dealer" does not include . . . [a] retailer (as defined in paragraph (f) of this section), unless the retailer, during *the prior calendar or tax year*, purchased more than $50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply)." (*Id.*, § 1027.100(b)(2)(i) (2018), italics added.)

JMB offered unrefuted evidence that in 2013 it was a retailer within the meaning of the AML laws. As a retailer, its obligations were extremely limited. "Dealers" in precious metals are required to "develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods." (31 C.F.R. § 1027.210(a)(1) (2018).) A "retailer" is not required to have an anti-money laundering compliance program unless its purchases of precious metals exceed $50,000, but "the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases." (*Id.*, § 1027.210(a)(2) (2018).) In other words, if JMB had any obligations under the AML laws in 2013, those obligations were limited to its purchases of precious metals.

c. There was no admissible evidence of red flags in the transactions.

A person who does not have a legal duty to investigate may nonetheless be obligated to investigate if he acquires "notice or knowledge of the happening of some incident or of some fact or facts sufficient to arouse the suspicions of a reasonable person." (*Hobart v. Hobart Estate Co.*, *supra*, 26 Cal.2d at p. 442.) JMB offered evidence from its employees that the transactions with the imposter were not suspicious or unusual.

ORIC contends the declaration of its expert Lormel showed that red flags were present in the transactions, and the trial court erred in excluding that declaration on the ground Lormel lacked the requisite foundation to opine on what constitutes 'red flags' in the precious metals industry.

"We review the trial court's ruling on the admissibility of expert testimony for abuse of discretion, except to the extent that the ruling is based on the court's conclusion of law, which we review de novo. [Citation.] A court abuses its discretion if its ruling is ' "so irrational or arbitrary that no reasonable person could agree with it." ' [Citation.]" (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 187.)[1]

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[1] "The rule that a trial court must liberally construe the evidence submitted in opposition to a summary judgment motion applies in ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact. [Citations.] In light of the rule of liberal construction, a reasoned explanation required in an expert declaration filed in opposition to a summary judgment motion need not be as detailed or extensive as that required in expert testimony presented in support of a summary judgment motion or at trial. [Citations.]" (*Garrett v. Howmedica Osteonics Corp.*, *supra*, 214 Cal.App.4th at p. 189.)

"The foundation required to establish the expert's qualifications is a showing that the expert has the requisite knowledge of, or was familiar with, or was involved in, a sufficient number of transactions involving the subject matter of the opinion. (See *People v. Chavez* (1985) 39 Cal.3d 823, 828–829 [218 Cal.Rptr. 49, 705 P.2d 372]; 1 Jefferson, Cal. Evidence Benchbook (Cont.Ed.Bar 4th ed. 2012) Competency, Examination, and Credibility of Witnesses, §§ 30.16, 30.21, pp. 668, 670.) 'Whether a person qualifies as an expert in a particular case . . . depends upon the facts of the case and the witness's qualifications.' (*People v. Bloyd* (1987) 43 Cal.3d 333, 357 [233 Cal.Rptr. 368, 729 P.2d 802].) '[T]he determinative issue in each case is whether the witness has sufficient skill or experience in the field so his testimony would be likely to assist the jury in the search for truth.' [Citation.]" (*Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1115.) Thus, the trial court's role as a gatekeeper " ' "is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." ' " (*Garrett v. Howmedica Osteonics Corp.*, *supra*, 214 Cal.App.4th at p. 187.)

ORIC contends Lormel had "decades of experience from the government side of the enactment and enforcement of AML laws and regulations [and] further experience in the private sector, including, without limitation, establishing AML programs for private clients." ORIC claims that "In addition to his decades of private and public experience, Lormel reviewed numerous publications concerning the precious metals industry [and] also reviewed the AML policies provided by the Respondents and the

deposition testimony of the Respondents' respective [person most knowledgeable]." In addition, Lormel spoke to the Jewelers Vigilance Committee (JVC), "a legal compliance expert in the jewelry and precious metals industry, to determine how the JVC was responding to the obligations imposed by the Patriot Act."

Lormel left the federal government in 2003, two years before the Financial Crimes Enforcement Network (FinCEN) issued its interim final rule to require dealers in precious metals, stones or jewels to establish anti-money laundering programs. Lormel's declaration states that between 2004 and 2010 his AML work involved major financial institutions and the financial services industry. Thus, Lormel identified no first-hand experience in the precious metals industry prior to this case.

Of the nine "publications" reviewed by Lormel, none appear to concern industry standards; all appear to be concerned with understanding or interpreting the federal rules and regulations applying the Patriot Act to dealers in precious metals, stones and jewels. Five are government documents: (1) a FinCEN document setting forth its interim final rule and seeking comment on it; (2) a set of FAQ's provided by FinCEN on the interim final rule; (3) a now-outdated citation to 31 Code of Federal Regulations part 103; (4) a FinCEN document on risk assessments of "foreign suppliers"; (5) FATF Guidance for Dealers in Precious Metals and Stones (FATF is an inter-governmental body concerned with the integrity of the international financial system). The remaining four "publications" are (1) "AML for Precious Metal Dealers – Beyond the Final Rule" by John Bullock; (2) "Anti-Money Laundering, Dealers in Precious Metals, Stones, or Jewels" by Laura Goldzung; (3) "Anti-Money Laundering Programs for Dealers in Precious Metals, Stones or Jewels"; (4) "Jewelers

Vigilance Committee USA PATRIOT Act Compliance Kit." Similarly, Lormel's conversation with the JVC, as described by Lormel himself, was about compliance with the Patriot Act. Lormel does not state that he discussed industry standards apart from the Patriot Act.

JMB was not required to comply with the Patriot Act at the time of the transactions in this case. Lormel's declaration shows no familiarity whatsoever with industry standards for precious metal *retailers*, who are not subject to the Patriot Act for sales of precious metals. Absent some familiarity with such industry standards, Lormel had no basis to opine that a particular transaction was a "red flag" which would arouse the suspicion of a reasonable retailer. The trial court did not abuse its discretion in sustaining JMB's objections and excluding much of Lormel's declaration.

In the absence of evidence of red flags, JMB had no duty to investigate the transactions and there is no basis to impute constructive knowledge to JMB that the imposter's cash was stolen. JMB was a bone fide purchaser and summary adjudication of the conversion cause of action in its favor was proper.

C. Summary Adjudication In Favor Of Apmex On The Conversion Cause Of Action Was Proper.

ORIC contends Lormel identified deficiencies in Apmex's AML program and concluded that these deficiencies contributed to Apmex's failure to identify "red flags" in the subject transactions and its failure to conduct a proper AML review. ORIC contends that at the very least, the red flags "mandated that Apmex conduct a further inquiry into the identity of the customer, review the public records available to verify the

information provided by the customer and investigate the source of the funds used to purchase the gold coins and the reasons why the customer was so aggressive, hurried and demanding. Had Apmex performed a proper AML investigation, it would have discovered the fraudulent nature of the purchases."

ORIC maintains the trial court abused its discretion in excluding Lormel's declaration. ORIC additionally contends that even in the absence of Lormel's declaration, there were "numerous disputed material issues that should have resulted in denial of Apmex's motion." ORIC concludes there is evidence showing that Apmex had constructive notice the imposter's cash was stolen and so summary adjudication was not proper.

1. The trial court's ruling

The trial court found "[w]ith respect to the issue of constructive notice, Defendant Apmex . . . contends that nothing about these transactions were unusual. Specifically, Apmex had more than 485,000 sales orders placed in 2013; 92,000 of these sales were repeat sales orders [placed] by the same customer and 900 of these sales were more than $100,000. (Greenwood Decl., ¶¶ 6-8.) Moreover, more than 25,000 of these sales orders were shipped to a mail box store by overnight mail. (Greenwood Decl., ¶¶ 9-10.) Additionally, in Plaintiff's PMK's deposition, Plaintiff's PMK agreed that there was nothing intrinsically unusual about the address where the gold was shipped, the name of the parties or the bank (Comerica Bank) where the funds for the transaction came from. (DSS 33-35.)"

In response, ORIC offered a declaration from Lormel, in which Lormel opined that Apmex's AML polices were deficient and Apmex did not adequately identify risks and red flags associated with the imposter's conduct. Lormel further opined

that had Apmex conducted a reasonable investigation –based on these red flags – it would have discovered additional facts that would have led to the discovery of the fraudulent scheme and actual knowledge of the converted funds.

The trial court found evidence Apmex had conceded the anti-money laundering requirements of federal law applied to it. The court found, however, that " '[t]he obligation under that statute is to the government rather than some remote victim. The obligation is not to roam through its customers looking for crooks and terrorists.' " The statute " 'does not create a private right of action and, therefore, does not establish a standard of care.' " The trial court understood ORIC to be claiming that the anti-money laundering laws imposed constructive notice on Apmex, and found that ORIC "had not shown why inadequate AML requirements impose constructive notice on Apmex as a matter of law."

The court also found that "as discussed in relation to JM Bullion's ruling above, Mr. Lormel's expert declaration lacks the requisite foundation to opine on what constitutes 'red flags' in the precious metal industry in order to impose on Defendant Apmex a duty to investigate such that Apmex was on inquiry notice."

The court recognized that there was some evidence of "red flags" from Apmex's own employee. The employee noted that "the customer was 'getting more insistent on order expediency' and being 'pushy;' after the completion of this second transaction. Defendant determined that if the Fraud Perpetrators 'called back' (presumably to initiate a third transaction) Defendant would need to obtain additional information from [the] Fraud Perpetrators. . . . Defendant also found that the overnight shipping contributed to the 'red flag' determination, but noted

that this method of shipping was not uncommon. (Opp., Ex. 5, 108-109.)" The court concluded that the "evidence shows that only after the Fraud Perpetrators' insistence in its second order—the next day—did Defendant's employee determine that the Fraud Perpetrators' behavior was suspicious."

2. Apmex did not have a duty to investigate the transactions under federal law.

The requirements for an anti-money laundering program for precious metals dealers are set forth in 31 Code of Federal Regulations part 1027.210 (2018) and are based on the dealer's specific circumstances and the practices of his industry. For example, a risk assessment must consider the "nature of the dealer's customers, suppliers, distribution channels, and geographic locations." (*Id.*, § 1027.210(b)(1)(i)(A) (2018).) Factors raising suspicion include "[p]urchases or sales that are not in conformity with standard industry practice." (*Id.*, § 1027.210(b)(1)(ii)(E) (2108).) As we discuss in section B, the trial court did not abuse its discretion in finding that Lormel lacked "the requisite foundation to opine on what constitutes 'red flags' in the precious metal industry." Thus, Lormel could not opine as to whether Apmex's AML program was deficient because it did not identify industry specific red flags. Even assuming for the sake of argument that a deficient AML program could impose constructive notice on a dealer, ORIC did not show that Apmex's program was deficient.

3. Apmex's own evidence of suspicious circumstances does not show Apmex had a duty to investigate the two transactions.

ORIC contends that even without Lormel's declaration there is some evidence that the imposter's behavior was

suspicious. ORIC submitted evidence that an Apmex employee noticed that the imposter's behavior was suspicious, specifically the customer became "more insistent on order expediency" and was "pushy." There was also some evidence that the shipping address aroused some suspicion. Apmex produced evidence that the imposter's behavior was also consistent with innocent behavior and that the shipping address was not inherently suspicious. As the court recognized, the evidence showed that "[a]ll these circumstances *together*" led to Apmex's decision that further inquiry might be necessary if the imposter called to make another purchase. In other words, Apmex concluded that two transactions were not sufficient to warrant an investigation, but an attempt at a third transaction following a similar pattern would warrant such an investigation.[2] ORIC did not submit any evidence showing that these circumstances would have caused a reasonable person to conclude an inquiry was necessary at some earlier point in Apmex's interactions with the imposter. Since Apmex had no duty to investigate, it was not on constructive notice the imposter's cash was stolen.

4. There is no merit to ORIC's miscellaneous claims of triable issues of material fact concerning Apmex's bona fide purchaser defense.

On appeal, ORIC contends that even without Lormel's (excluded) declaration, the parties' "dueling separate statements revealed numerous disputed material issues that should have resulted in [the] denial of Apmex's motion." ORIC points to its

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[2] In fact, the imposter did attempt a third transaction and Apmex told the imposter it needed to verify his bank account information. The imposter then abandoned the transaction.

opposition disputing Facts 14, 16, 19, 20, 21, 33, and 34. ORIC does not dispute the identified facts. For example, in Fact 14, Apmex stated that the gold coins "were shipped to Mehrdad Saghian at 1613 Chelsea Rd, Apt. # 361, San Marino, CA 91108." ORIC disputes this saying, "The gold coins were not shipped to an apartment; they were shipped to a P.O. Box." It is not disputed that the imposter provided what appeared to be a residential address, but that the address really was a mail box business. ORIC also contends it identified its own undisputed facts based in part on Apmex's documents and deposition testimony. ORIC identifies these facts as Facts 43-104, but does not provide argument to support that broad claim. Accordingly, the claim is forfeited.

ORIC did not offer admissible evidence that Apmex had a duty to investigate the transactions and there is no basis to impute constructive knowledge to Apmex that the imposter's cash was stolen. Apmex was a bona fide purchaser and summary adjudication in its favor was proper.

D. Summary Adjudication In Favor Of Respondents On The Constructive Trust And Restitution Causes Of Action Was Proper.

As the trial court recognized, courts generally do not treat claims for constructive trust or restitution as causes of action. Constructive trust and restitution are considered remedies. (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1485; *Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 911.)

Although constructive trust and restitution are sometimes treated as claims for relief, these claims require some proof of "wrongful" or "unjust" possession of property by the defendant.

(*Optional Captial, Inc. v. Das Corp.* (2014) 222 Cal.App.4th 1388, 1402; *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593.) Here, ORIC did not make such a showing. To the contrary, respondents proved they were bona fide purchasers of the stolen cash. Accordingly, summary adjudication in favor of respondents on these two claims was proper.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, Acting P. J.

We concur:

WILEY, J.

ADAMS, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution